

PJH
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FILED

AUG 12 2008

RIGHT TO CUSTODY
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE OR FEDERAL CUSTODY

Name Reyes Gabriel R
(Last) (First) (Initial)Prisoner Number C-88996 PELICAN BAY STATE PRISONInstitutional Address P.O. BOX 7500 DS-121
Crescent city, CA. 95531UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAGabriel Ralph Reyes
(Enter the full name of plaintiff in this action.)

vs.

Robert Horel, warden
et. al.

(Enter the full name of respondent(s) or jailor in this action)

CV

08

3851

Case No. _____
(To be provided by the clerk of court)PETITION FOR A WRIT
OF HABEAS CORPUS

E-filing

(PR)

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

ORIGINAL

08-3851 PJH

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Disciplinary Hearing Pelican Bay state Prison
Court Location

- (b) Case number, if known RVR log# D06-07-0021

- (c) Date and terms of sentence 8/11/06 (see below 2.)

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: Pelican Bay state Prison

Address: P.O. Box 7500, Crescent City, CA. 95531

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Unauthorized Business Dealings C.C.R. Title 15 §3024(a): Assessed 30 days credit loss;
4 points added to classification score increasing custody; Banned correspondence with Ms. Ghiz;
Banned from donating Art work and Pro-se to Non-Profit groups

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

~~Jury~~ ☐ ~~Judge alone~~ ☐ Judge alone on a transcript Senior Hearing Officer

6. Did you testify at your trial? Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☐ No ☒

(b) Preliminary hearing Yes ☐ No ☒

(c) Time of plea Yes ☐ No ☒

(d) Trial Yes ☐ No ☒

(e) Sentencing Yes ☐ No ☒

(f) Appeal Yes ☐ No ☒

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 4/2008 Result: Denied

Supreme Court of California Yes ☒ No ☐

Year: 6/2008 Result: Denied

Any other court SUPERIOR court Yes ☒ No ☐

Year: 2/2008 Result: Denied

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes ☒ No ☐

(c) Was there an opinion?

Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☐ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No ☐

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: California Supreme court

Type of Proceeding: Motion for Reconsideration and clarification

Grounds raised (Be brief but specific):

a. Same

b. _____

c. _____

d. _____

Result: Returned unheard by clerk Date of Result: 7/2008

II. Name of Court: _____

Type of Proceeding: *6*

Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No ☒

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Petitioner state Habeas corpus was denied in error by the superior
6 court who did not rule on all grounds / claims

7 Supporting Facts: Petitioner raised several Due process claims as stated here in
8 each of which were ignored, overlooked and not ruled on by the California
9 superior court of Del Norte County, and subsequently ignored by all state courts,
10 court relied on an alleged security claim to justify denial.

11 Claim Two: There is NO Evidence to support the charge of "unauthorized
12 Business Dealings" or the finding of guilt for Rules violation report

13 Supporting Facts: Petitioner only donated Art work and Pro-se to non-profit group
14 with a understanding that he would not receive any compensation or benefit from such
15 donation. Petitioner has never received any monies or payment from Non-profit group
16 and Defendants did not present any such evidence.

17 Claim Three: The failure of Prison officials to appoint an Investigative Employee
18 based on Petitioner's solitary confinement violated right to fair Hearing / Due Process

19 Supporting Facts: Petitioner has been housed in solitary confinement in the Security
20 Housing Unit (SHU) at all times, and requested assignment of investigative employee
21 for assistance in gathering witness testimony and other evidence because he is
22 confined to his cell 22 1/2 hrs a day in order that he can prepare a fair defense.

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 Claims Four through Nine listed on following page No. 7

26
27 (All grounds have been presented to state courts)
28

Claim Four: Denial to have witnesses present or made available at Disciplinary Hearing violated Due Process and the right to a fair hearing.

Supporting Facts: Petitioner made request for witnesses to be present and indicated he would discuss witnesses with Investigative Employee, however no such investigator was assigned to petitioner, thus at Hearing Petitioner again asserted his request for witnesses to be present or made available by phone. The Senior Hearing officer Lt. Rice, informed Petitioner that no witnesses were available and would not be made available and that the hearing would go on with or without Petitioner being present.

Claim Five: Denial to allow Petitioner to present evidence on his own behalf violated Petitioner's right to a fair hearing and Due Process.

Supporting Facts: At Petitioner's disciplinary hearing he presented the Senior Hearing Officer several documents, a letter from Ms. Ghiz operator of the non-profit group Art-release.org outlining the conditions of which were attached to my donation of art work which included giving up all and any rights to art work and any entitlement to it. Petitioner also presented other documents showing that he had donated other art work, time and funds to other non profit groups such as Families To Amend Calif. Three Strikes law (F.A.C.T.S.), The Jane Goodall Institute (J.G.I.). He also presented a list of questions for witnesses and Reporting Employee. However, Senior Hearing Officer ignored them and never even considered them or document them.

Claim Six: Denial of Disclosure of Confidential information violated Petitioner's right to confront and defend himself against such information.

Supporting Facts: The disclosure of the confidential memorandum and all information there in was denied by the Senior hearing officer based on the alleged "divulging this information would endanger the safety of persons and jeopardize the security of the institution". However, the only confidential information contained there in is personal information about individuals related to the charge and other information not relevant to Petitioner's guilt or otherwise related to confidential criteria, such information can not be used to keep all factual or other information that may have helped Petitioner in his defense. Any personal information and the such should have been redacted and all other information provided to Petitioner or not relied on by the Senior Hearing officer in the hearing to find Petitioner guilty.

Claim Seven: The charge of unauthorized Business Dealings is not a chargeable offense under serious rules violation.

Supporting facts: The state rules and regulations under the California Code of Regulations Title 15 list all offenses that are chargeable as serious rule violations, this charge is not one of them, resulting in a violation of Petitioners Due process and freedom of association and expression.

Claim Eight: The actions of Prison officials violated Petitioners First Amendment right and motivated by Retaliation.

Supporting Facts: Petitioner has relied on his freedom of speech, association and expression in speaking out via his political art work, art work and Pro-se writings against the cruel and harsh conditions suffered by him and other prisoners confined in Pelican Bay State Prison, Security Housing unit based on a policy that is overbroad, vague and only purpose is to punish, break or otherwise harm prisoners who do not conform to the Prison industrial complex's brain washing scheme's and snitching rewards system. Petitioner also speaks out against California's three strikes law, and works to help youth at risk all of which goes against the ideals and beliefs of Prison officials. After exercising this legal right Petitioner has been charged with this rules violations which has been detrimental to him.

claim Nine: The charge violated the Double Jeopardy clause, as Petitioner was charged for the same alleged violation with the same non-profit group with the same art work.

Supporting facts: Petitioner had previously been charged with the same alleged offense, with the same non-profit group (artrelease.org) with the same donated art work and Pro-se and the charge was dropped in the interest of justice as there was as is now no evidence to support the charge. Disatisfied the reporting employee once again filed charges and this time made sure the Senior Hearing officer was hand picked, in fact some one he had known for 16 yrs. thus, under the same set of circumstances I was twice charged and put in jeopardy.

Case Citations for each claim:

claim one: Walker v. Sumner (9th Cir. 1990) 917 F.2d. 382, 386 ; Reed v. Faulkner, (7th Cir. 1988) 842 F.2d. 960, 963 ; Crofton v. Roe (9th Cir. 1999) 170 F.3d. 957.

claim two: Superintendant v. Hill (1985) 472 U.S. 445, 456 ; U.S. Const. 14th Amend.

claim Three: Wolff v. Mc Donnell (1974) 418 U.S. 570 ; U.S. Const. 14 Amend.

claim Four: Wolff v. Mc Donnell (1974) 418 U.S. 539 ; Ponte v. Real (1985) 105 S. Ct 2197 ; U.S. Const. 14 Amend.

claim Five: Wolff v. Mc Donnell (1974) 418 U.S. 539, 566 ; U.S. Const. 14th Amend.

claim six: Zimmerly v. Keeney, (9th Cir. 1987) 831 F.2d. 183, 196 and Fn. 1 ; Coto v. Rushen (9th Cir 1987) 824 F.2d. 703 ; Pratt v. Rowland (N.D. Cal. 1991) 770 F. Supp. 1399-1401.

claim seven: Superintendant v. Hill, (1985) 472 U.S. 445 ; Crofton v. Roe (9th Cir. 1999) 170 F.3d 957.

claim Eight: U.S. v. Goodwin, 457 U.S. 368, 73 L.Ed. 2d. 74, 102 S.Ct. 2385 (1982) ; Procurier v. Martinez, 416 U.S. 396, 40 L.Ed. 2d 224, 94 S.Ct 1800 (1974) ; U.S. Const. 1st Amend.

claim Nine: Benton v. Maryland, 395 U.S. 784, 795-796, 89 S.Ct. 2056, 23 L.Ed. 2d. 707 ; U.S. v. Dixon (1993) 509 U.S. 688, 125 L.Ed. 2d. 556, 113 S.Ct. 2849 ; U.S. v. Booklier (9th Cir. 1981) 637 F.2d. 620 ; Bartkus v. Illinois, (1959) 359 U.S. 121, 151-155, 79 S.Ct. 676, 697, 3 L.Ed. 2d. 684 ; North Carolina v. Pearce (1969) 395 U.S. 711.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
 2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
 3 of these cases:

4 (See attached at page 10 for each citation for each claim)
 5 _____
 6 _____

7 Do you have an attorney for this petition?

Yes _____

No ✓

8 If you do, give the name and address of your attorney:
 9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
 11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
 13 Executed on

August 3, 2008

14 Date

Mah R

15 Signature of Petitioner
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(Rev. 6/02)

PROOF OF SERVICE BY MAIL

(C.C.P. Section 101a #2105.5, 20 U.S.C. 1746)

I, Gabriel Reyes, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below named action.

My Address is: P.O. Box 7500, Crescent City, CA 95531.

On the 6 day of August, in the year of 2008, I served the following documents: (set forth the exact title of documents served)

Federal writ of Habeas corpus

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

Attorney General's office
455 Golden Gate Ave #11000
San Francisco, CA. 94102

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 6 day of August, 2008.

Signed: [Signature]
(Declarant Signature)

NAME Gabriel Reyes
CDC NO. C8899 HOUSING DS-121
PELICAN BAY STATE PRISON
PO BOX 7500
CRESCENT CITY, CA. 95532



RECEIVED

AUG 11 2008

FORWARD W. WATSON
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
pro se

U.S. Northern Dist. of Ca.
U.S. Courthouse
450 Golden Gate Ave.
San Francisco, Ca. 94102-3483

CONFIDENTIAL LEGAL MAIL

D DePew CTA

8-7-08